

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DANIEL MULVANNY and DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT, Sweet Home, OR

*Docket No. 01-1064; Submitted on the Record;
Issued February 6, 2002*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained a neck and right arm injury causally related to his federal employment.

On January 27, 2000 appellant, then a 47-year-old engineering equipment operator, filed a traumatic injury claim, alleging that on January 4, 2000 excessive bouncing and jarring while operating excavator equipment at work caused severe neck pain, extending into his right arm. The record reflects that appellant has two previously accepted cervical and thoracic strains sustained on March 16, 1996 and an aggravation of a cervical strain sustained on December 16, 1996. Appellant stopped work on July 31, 2000 following the claimed January 4, 2000 injury and returned to work on September 18, 2000.

On November 3, 2000 the Office of Workers' Compensation Programs informed appellant that additional medical evidence was needed to establish his claim. The Office requested a physician's report including the dates of examination and treatment; history of injury given by him to his physician; a detailed description of findings and diagnosis and a physician's opinion supported by a medical examination as to how the reported work incident caused the claimed injury.

In response, appellant submitted a narrative letter and medical evidence, including a report from Dr. John Dew, an osteopath, dated January 25, 2000. He indicated that appellant was seen for chronic neck pain and persistent irritation and radiating shoulder and arm pain, which appellant believed was related to his previous injury that occurred on March 16, 1996. Dr. Dew related that appellant felt that he had progressive weakness in the right arm and occasional numbness in the hands. He further recommended a magnetic resonance imaging (MRI) scan of the neck and stated that appellant could continue his regular duty position, since his condition would not be aggravated by his work as long as he had the ability to change the activity if aggravation occurred.

In a radiology report dated February 11, 2000, Dr. Karen Harkens, a Board-certified radiologist, reviewed an MRI which revealed that appellant had a moderate-sized right posterior paramedian disc protrusion at C5-6 and a small broad based right posterolateral disc protrusion at C6-7.

In a February 29, 2000 report, Dr. Michael Dorsen, an attending physician, discussed appellant's accepted injuries of March and December 16, 1996 and his symptoms at that time. Dr. Dorsen stated that on March 16, 1996 appellant sustained a vertical compression injury to the head and developed the onset of right neck and arm pain. He further stated that appellant developed recurrent neck pain on December 16, 1996 following a twisting of his neck. Dr. Dorsen indicated that his neck pain persisted and worsened. He further discussed the previous MRI scan and upcoming surgery and diagnosed right C6 radiculopathy secondary to disc herniation.

In a report dated July 27, 2000, Dr. Dew discussed again appellant's symptoms of neck and right arm pain, which had progressively worsened and that appellant had been recently scheduled for an anterior cervical discectomy and fusion at C5-6. In an operative report dated August 11, 2000, Dr. Dorsen reviewed the discectomy procedure discussed by Dr. Dew, which he performed on July 31, 2000. In an August 9, 2000 report, Dr. Dew reviewed appellant's postoperative status.

In a November 20, 2000 report, Dr. Dew reiterated appellant's medical history and his treatment of appellant for neck pain and stated that on his last visit with appellant on January 25, 2000 he had an acute exacerbation of his chronic symptoms. Dr. Dew indicated that appellant reportedly aggravated his neck while driving an excavator on January 4, 2000 and had an acute increase of neck and upper back pain. The physician further noted that he had spoken with appellant about the claimed January 4, 2000 injury previously, although he had not specifically referred to this incident in his January 25, 2000 report.

By decision dated January 28, 2001, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that his condition was caused by the January 4, 2000 employment incident.¹

The Board finds that appellant has failed to establish that he sustained a neck and right arm condition in the performance of duty.

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the injury claimed was caused or aggravated by his federal employment. As part of this burden, appellant must submit a rationalized medical opinion, based upon a complete and accurate factual and medical background, showing a causal relationship between the injury claimed and factors of his federal employment.² Causal relationship is a

¹ The Office doubled appellant's January 4, 2000 traumatic injury claim (140355473), which was denied on January 28, 2001 with the previous case (140321787) on January 29, 2001 as both claims involved the same body part.

² *Steven R. Piper*, 39 ECAB 312 (1987).

medical issue³ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁴ must be one of reasonable medical certainty⁵ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁶

In this case, none of the medical reports submitted by appellant directly address the neck and right arm pain in relation to the claimed incident of January 4, 2000. For example, Dr. Dew noted in his January 25, 2000 report that appellant had preexisting neck and right arm pain, which appellant related to him was likely caused by his accepted March 16, 1996 work injury. Dr. Dew did not mention in this report appellant's claimed injury of January 4, 2000, which reportedly occurred two weeks prior. Moreover, Dr. Dorsen, in his February 29, 2000 report, also discussed appellant's persistent neck pain and numbness in his right arm, however, only referred to his history of injury in March and December 16, 1996 and did not discuss the January 4, 2000 incident appellant alleged in the claim denied by the Office.

Further, although Dr. Dew indicated in his November 20, 2000 report that appellant had actually discussed the claimed January 4, 2000 incident with him and that he simply failed to report it, Dr. Dew failed to establish at that time that the neck and right arm pain was related to the claimed incident. Absent a rationalized medical opinion establishing a causal relationship between appellant's neck and right arm pain and the claimed work-related injury, none of the medical reports establish a causal relationship. Because the medical reports submitted omit discussion of how the January 4, 2000 incident caused appellant a neck and right arm injury, especially in light of his preexisting injuries, they are insufficient to establish appellant's claim. Therefore, the Board finds that appellant has not met his burden of proof.

³ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁴ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁵ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁶ *See William E. Enright*, 31 ECAB 426, 430 (1980).

The decision of the Office of Workers' Compensation Programs dated January 28, 2001 is affirmed.

Dated, Washington, DC
February 6, 2002

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member